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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Fiftieth session

SUMMARY RECORD OF THE 24th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 19 August 1998, at 10 a.m.

Chairman: Mr. GUISSE

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The meeting was called to order at 10.05 a.m.

PREVENTION OF DISCRIMINATION AGAINST AND THE PROTECTION OF MINORITIES (agenda item 8) (continued) (E/CN.4/Sub.2/1998/18; E/CN.4/Sub.2/1998/NGO/3)

1. Mr. EIDE said that a number of constructive proposals had been made during the discussion on the report of the Working Group on Minorities (E/CN.4/Sub.2/1998/18). All members had expressed themselves in favour of continuing work on the Commentary to the Declaration and transmitting it to Governments and non-governmental organizations, and had encouraged the use of working papers.

2. With regard to the 1503 procedure, he explained in response to a comment by Mr. Yimer that the Working Group had no intention of becoming involved in those matters but had merely wished to inform the minorities present about other mechanisms to which they could have recourse such as the 1503 procedure or the treaty bodies.

3. Mr. Khalil and Mr. Maxim had drawn attention to the question of the relationship between the concepts of integration and of assimilation. The point was essential to all work on minorities and would be considered in greater depth.

4. The seminar on the role of the media had been a success. Regrettably, the Working Group had not been able to discuss the topic in greater detail. The working paper on the subject (E/CN.4/Sub.2/AC.5/1998/WP.3) would serve for the next session of the Working Group, at which the issue would be considered more closely and recommendations would be made.

5. In conclusion, he said that the right to self-determination should not be interpreted as the right to self-determination of an ethnic group as such. Within the United Nations framework, the right to self-determination meant the right to self-determination of peoples in general. To distort the concept by associating it with the idea of ethnic identity was to encourage the forming of clans which would use the self-determination principle to justify their desire for autonomy. The principle was a most important one and had greatly helped to transform the international system, but if wrongly interpreted, it could throw into doubt the very foundations of the Universal Declaration of Human Rights.

6. Mr. SORABJEE said that one of the main causes of violations of the rights of persons belonging to minorities was the persistence and perpetuation of negative stereotypes concerning some ethnic or religious groups, which were transmitted to young people by parents, teachers and the media. It was therefore essential to promote tolerance from an early age, observing the principle set forth in article 5.3 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which provided that a child "shall be brought up in a spirit of understanding, tolerance, ... respect for freedom of religion or belief of others ...".

7. The media had an important role to play in the protection of minority rights. They had a duty to refrain in all circumstances from disseminating ideas based on racial superiority, racial hatred and incitement to violence

against particular racial groups. It was also their responsibility to promote tolerance and multiculturalism by adopting codes of conduct and establishing independent monitoring and complaint mechanisms. At the same time, freedom of expression needed to be preserved and care had to be taken that, on the pretext of protecting minorities, Governments did not ban dissident or critical views which they found unpalatable.

8. The most serious violations of minority rights often occurred in the religious sphere. According to article 2 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, persons belonging to minorities had the right "to profess and practise their own religion". As regards the extent of that right, he noted that in India, religious freedom as guaranteed by the Constitution included the right to propagate one's religion as well as freedom of conversion to other religions by lawful means. Laws adopted in certain countries which prohibited religious conversion were an instance of intolerance and should be rescinded in accordance with article 4 of the Declaration on the Elimination of All Forms of Intolerance, which required States to enact or rescind legislation where necessary to prohibit any discrimination on grounds of religion or belief. The best way of protecting minorities was to create a climate of tolerance and to foster a culture of tolerance and mutual understanding.

Statements in exercise of the right of reply

9. Mr. WELDEGIORGIS (Observer for Eritrea) said that by repeating its baseless allegations again and again, the Ethiopian Government was seeking to transform pure falsehoods into facts. For example, the air attack on Mekelle airbase on 5 June had been carried out in response to an Ethiopian air attack on Asmara International Airport. The claim that Ethiopia's attack had been retaliatory was untrue, as many diplomats and journalists had acknowledged. The Eritrean attack had not been premeditated, as was claimed, and the resulting civilian deaths had not been caused intentionally. Indeed, the President of Eritrea had expressed his apologies to the families of the victims. The statement attributed to him was a fabrication. The Ethiopian Government's accusation that 72 Ethiopian citizens living in Eritrea had been arbitrarily detained by the Eritrean Government was also false. His Government had already informed the International Committee of the Red Cross (ICRC) that no Ethiopian citizen was being detained arbitrarily in Eritrea and that, of the alleged 72 Ethiopian detainees, only 12 still remained in police custody pending the completion of investigations, 6 had been duly tried and sentenced and were serving their respective terms, 32 had been released long since, and 22 had never been detained at all. In support of its assertions, the Eritrean delegation had submitted documents whose authenticity could be checked, since they emanated from the United States Government, Amnesty International, United Nations agencies and ICRC. In contrast, the Ethiopian delegation had quoted only one document, whose credibility was questionable to say the least.

10. As proof of its good faith, and because it believed that to be the best way of verifying the truth, Eritrea had invited the Sub-Commission to send a delegation to conduct on-site investigations of the human rights situation in both Eritrea and Ethiopia.

11. Mr. BAUMANIS (Observer for Latvia) expressed regret at the fact that the observer for the Russian Federation had on the previous day again raised the question of non-citizenship although everyone considered the matter to be settled, the amendments to the citizenship law made by the Latvian Parliament having been received with satisfaction by the Organization for Security and Cooperation in Europe (OSCE), the European Union, the United States of America and many other institutions and international organizations. Only Russian officials appeared to adopt a different interpretation.

12. Mr. NAZARIAN (Observer for Armenia), replying to the statement by the observer for Azerbaijan, said that Armenia was not in conflict with any of its neighbouring countries and that there had never been an Armenian aggression against Azerbaijan. The only conflict that existed involved the claim of the Armenians of Nagorno-Karabakh to their right of self-determination.

13. When the observer for Azerbaijan claimed that minorities living in Azerbaijan could freely exercise their political, cultural and religious rights, she was apparently forgetting the mass killings, massacres, expulsions and other abuses of which the Armenians had been the victims in several Azerbaijani cities, especially Sumgait, and which clearly proved that her Government did not guarantee the exercise of the rights of the population of Nagorno-Karabakh. To present the Nagorno-Karabakh issue as a problem of minorities was incorrect, since Armenians formed a majority in the region. The truth of the matter was that they had suffered alien domination and had been deprived of their political, social and cultural rights for centuries.

14. Mr. ALEMU (Observer for Ethiopia), replying to the statement by the observer for Eritrea, reiterated that his Government fully respected the rights of Eritrean nationals living peacefully in Ethiopia, and had proved that position in practice.

15. As explained earlier, legitimate measures had been taken against a limited number of Eritrean nationals, not because of their origin but because the individuals in question posed a threat to the safety of Ethiopians and the security of the country as a whole by their membership of a clandestine terrorist organization whose object was to advance Eritrea's policy of aggression against Ethiopia. The measures taken were thus fully in accordance with international law. The Eritrean Government's defamatory and racist allegations were plainly intended to abuse his own Government's policy of transparency. The reality, however, was that Ethiopia was a country open to all while Eritrea was a closed country in which no international agency could directly ascertain the situation of Ethiopian residents.

16. Moreover, the Eritrean Government, not content with committing gross and systematic violations of the human rights of Ethiopians, had also, in the Eritrean ports of Massawa and Assab, illegally seized goods intended for relief and civilian projects.

17. The Eritrean Government was manipulating the facts in order to divert attention from its criminal acts. It was misrepresenting the results of the investigation carried out by the Fact-Finding Committee of Ambassadors of the Organization of African Unity (OAU). That Committee had established that

Ethiopia had administered the town of Badma before 12 May 1998 and that, consequently, Eritrea had been the aggressor in that incident. In conclusion, he said that the Eritrean attack on Mekelle had been premeditated and that schools had been targeted deliberately.

18. Ms. EIVAZOVA (Observer for Azerbaijan), replying to the observer for Armenia, said that the adoption of four resolutions by the Security Council on the armed conflict between Armenia and Azerbaijan, the preparation of three documents by the Commission on Human Rights and various texts adopted by OSCE in Budapest and Lisbon as well as by many other organizations confirmed that Armenia had attacked Azerbaijan and proved that an aggression had indeed taken place.

19. As for the events at Sumgait, courts of law had recognized and civilian witnesses had confirmed that the Armenians themselves had organized the pogroms in order to justify the aggression against Azerbaijan. The picture presented by the observer for Armenia was a falsification of the true facts.

20. Mr. WELDEGIORGIS (Observer for Eritrea) said that the Ethiopian Government was trying to cover up the crimes, atrocities and violations of human rights and fundamental freedoms perpetrated against Eritreans and Ethiopians of Eritrean origin. So far as the air attack was concerned, he possessed graphic evidence showing that the Ethiopian air force had attacked Asmara by surprise and had returned several minutes later. The Eritrean air force had intervened only after that. Other attacks had taken place on the following day. Those attacks could not be denied, and the Ethiopian Prime Minister himself, unless he was lying, had admitted issuing the order to carry out a preventive attack.

21. The reason why the Ethiopian Government had so far failed to invite observers from the Sub-Commission or other bodies to visit the country in order to conduct an on-site investigation was that it was afraid of the truth being revealed. In reality, the Ethiopian Government and all Ethiopian representatives were using every possible means to conceal their odious crimes against Eritreans.

22. Mr. NAZARIAN (Observer for Armenia), replying to the observer for Azerbaijan, said that no reference to an aggression by Armenia was to be found anywhere in the Security Council resolutions. Quite the contrary, it was Azerbaijan that had, for the reasons described, launched a major offensive against the civilian population of Nagorno-Karabakh. Neither did the resolutions speak of a withdrawal of Armenian forces from Nagorno-Karabakh, for the simple reason that there had never been any Armenian forces in the region.

23. Lastly, no decision on Nagorno-Karabakh had been adopted at the Lisbon Summit of OSCE. There had only been a declaration by the Acting Chairman, which had in fact caused an upset in the negotiations.

24. Such distortions of the truth impeded the work of international bodies such as the Sub-Commission and delayed the adoption of constructive measures to remedy the plight of the people of Nagorno-Karabakh.

25. Mr. ALEMU (Observer for Ethiopia) said that 258 Ethiopian residents of Assab had left Eritrea for Djibouti under inhuman conditions after being obliged to pay exorbitant amounts for the sea-voyage. Interviewed by international news media, they had expressed concern about Ethiopian nationals forced to stay in Eritrea notwithstanding their expressed wish to return to their country because they had no money to pay for visas, transport and clearance by various government institutions. A total of 6,000 Ethiopians had left Eritrea to date.

26. In conclusion, he said that, however hard it tried, the Eritrean Government could never conceal its crimes. He emphasized once again that there was no air base at Mekelle and that the attack on that town had been premeditated and deliberately targeted against schools.

27. Ms. EIVAZOVA (Observer for Azerbaijan) said that it was Armenia that had attacked her country and occupied some 20 per cent of its territory, causing, inter alia, population displacements. How could Armenia accuse Azerbaijan of having attacked Nagorno-Karabakh when that region formed part of Azerbaijan's territory? After a brief review of the historical circumstances as a result of which Armenians had come to form some 80 per cent of the population of Nagorno-Karabakh, she said that the fact of being present in a region in large numbers did not confer the right to own that region. Azerbaijan continued to be firmly opposed to the reunification of Armenia and Nagorno-Karabakh.

28. The CHAIRPERSON announced that the Sub-Commission had completed its consideration of agenda item 8.

THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS:

(a) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY;

(b) APPLICATION OF INTERNATIONAL STANDARDS CONCERNING THE HUMAN RIGHTS OF DETAINED JUVENILES;

(c) GROSS AND MASSIVE VIOLATIONS OF HUMAN RIGHTS AS AN INTERNATIONAL CRIME;

(d) JUVENILE JUSTICE;

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(f) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES

(agenda item 9) (E/CN.4/Sub.2/1998/19; E/C.4/Sub.2/NGO/2; E/CN.4/Sub.2/1997/29)

29. Mr. JOINET, introducing the report of the sessional working group on the administration of justice (E/CN.4/Sub.2/1998/19), said that its session had attracted a record participation. The working group had shortened its agenda and had taken due account of the recommendation of the Commission on Human Rights concerning duplication of work. The session had been characterized by transparency and a spirit of dialogue. The first and most important item on

the agenda had been devoted to the preliminary draft international convention for the protection of all persons against forced disappearance. The second item concerned issues relating to the deprivation of the right to life. In that connection, the working group had considered the follow-up report by Mr. Guissé on the de jure and de facto abolition of the death penalty throughout the world. The data contained in the report showed that no development had taken place since the previous year. The working group had invited Mr. Guissé to submit at its next session an updated follow-up report taking into account the approach specified in Commission on Human Rights resolution 1998/8 and containing a list of measures taken by various United Nations bodies and an analysis of progress in the signing or ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.

30. The third agenda item dealt with habeas corpus. The working group had abandoned the idea of drafting a third optional protocol to the Covenant, the Human Rights Committee having taken the view that the undertaking was too complex. The Committee had, however, agreed at the working group's request to review its general comment on article 4 of the Covenant and to reaffirm that habeas corpus was a non-derogable right.

31. The fourth agenda item concerned measures to be taken to give full effect to the Genocide Convention of 1948. The adoption of the statute for the International Criminal Court which had taken place since the inclusion of the item in the agenda, had made good one of the matters left outstanding under the 1948 Convention (which provided, precisely, for the establishment of a criminal court). The working group had accordingly decided to amend the title of agenda item 4 to read "Action to combat genocide: from the 1948 Convention to the International Criminal Court, review and prospects", pending a possible decision at the next session to drop the item altogether.

32. Item 5 (Juvenile justice) had been taken off the agenda. The working group had requested the secretariat, in the interest of avoiding duplication of work, to prepare a document listing other initiatives taken in that sphere. With regard to agenda item 6 (Privatization of prisons), which had been on the agenda since 1989, the working group had held a long discussion on the subject of Commission on Human Rights resolution 1998/32 requesting the Sub-Commission to reconsider the item and decide whether to abandon the idea of appointing a special rapporteur and/or of undertaking a special study. The working group had eventually decided that it would dispense with the appointment of a special rapporteur, but had requested Mr. Alfonso Martínez to prepare for the next session a brief update on measures taken by countries in connection with privatization of prisons. It had also decided to draw treaty bodies' attention to the need for a clearer distinction to be drawn between the physical conditions for prisoners, which were linked with each country's level of development, and ill-treatment of prisoners, which was unrelated to the level of development.

33. Agenda item 7 (Gross and massive violations of human rights as an international crime) had finally been removed from the agenda in view of the desultory attitude of the Commission on Human Rights, which showed that there was still progress to be made in the matter of duplication of work.

34. Reverting to agenda item 1, namely, the preliminary draft international convention on forced disappearances, he said that, while the drafting process had not been facilitated by the appointment of new members to the working group, a consensus had finally emerged on all the draft articles. The first part (substance) had already been adopted in 1996, but it had been re-examined article by article in order to enable the new members to contribute their views. The second part (follow-up mechanism) had been drafted. The document had been issued in the three working languages, and the working group's report included a summary record of the debate in its paragraphs 17 to 63.

35. Several articles on which there might not have been unanimity had finally been adopted by consensus. Thus, the working group had decided to refer in article 1 to forced disappearances perpetrated by non-government groups, an increasingly widespread phenomenon which the International Law Commission was starting to concern itself with. In article 3, it had agreed that the systematic or massive practice of forced disappearance constituted a crime against humanity, and was therefore exempt from statutory limitation. In all other cases, the offence was subject to statutory limitation starting from the moment when the fate or whereabouts of the disappeared person was established with certainty, and States were required to undertake to adopt the longest period of limitation laid down in their national criminal law.

36. In connection with article 25, many NGOs had suggested that the Secretary-General's role in respect of the functioning of the monitoring mechanism (Committee against Forced Disappearance) should now pass to the High Commissioner for Human Rights. The working group had taken the view that the idea, though good in itself, was slightly premature, in that it raised the question of coordination between the mandate of the Secretary-General, who was the depositary of the instrument, and that of the High Commissioner. It had therefore been decided to maintain the original wording. Lastly, the most difficult issue had been that of reservations, dealt with in article 36. The problem had been to decide whether there should be automatic recognition of admissibility of claims. Opinions had been divided, but a compromise solution had been reached to the effect that, if a State acceded to the Convention without making reservations, claims in respect of that State would be automatically admissible. A State that did not wish claims brought against it to be automatically admissible would have to lodge a reservation. In dealing with the issue, the working group had decided to reproduce the wording of article 20 (2) of the International Convention on the Elimination of All Forms of Racial Discrimination.

37. He hoped that the work done by the working group would enable the Sub-Commission to adopt a decision or a resolution transmitting the revised draft convention, which the working group had adopted by consensus, to the Commission on Human Rights. In conclusion, he expressed appreciation for the cooperation and assistance of the secretariat, the NGOs (which had facilitated the work of the group by appointing a single individual to represent them), and the special representatives and chairpersons of the various working groups who had contributed to the work. He also paid a tribute to the memory of all victims of forced disappearance.

38. Mr. ARTUCIO (International Commission of Jurists), speaking on behalf of the NGOs he had represented at the session of the working group on the

administration of justice, thanked the members of the working group and, in particular, its Chairman-Rapporteur for the spirit of dialogue shown and for the opportunity given to NGOs to take part in the preparation of the draft convention. The text adopted by the working group was a good one and would contribute to the struggle against the phenomenon of forced disappearance. It was to be hoped that the Sub-Committee would approve it and transmit it to the Commission on Human Rights, whence it would proceed to the General Assembly and eventually become the universal convention everyone was waiting for.

39. Mrs. WARZAZI thanked Mr. Joinet for the excellent work done on the draft convention. She hoped that special emphasis would be placed, as agreed, on disappearances perpetrated by non-government groups, and thought that the article adopted on the subject of reservations was entirely appropriate. She hoped that the text of the draft would be adopted by the Sub-Commission without delay and transmitted together with the record of the working group's work to the Commission on Human Rights.

40. Mr. ZHONG Shukong said that the Sub-Commission should request the Commission to invite States Members of the United Nations as well as intergovernmental and non-governmental organizations to make comments on the draft convention.

41. Mr. JOINET, supported by Mrs. WARZAZI and Mr. WEISSBRODT, proposed that the Sub-Commission should decide by consensus to transmit to the Commission the draft convention together with the summary records of all debates concerning the amendments thereto and to request the Commission to transmit the draft to Governments, NGOs and intergovernmental organizations for their consideration and comments.

42. The CHAIRMAN said that he took it that the Sub-Commission accepted that proposal.

43. It was so decided.

44. Mr. DJONBALIC (Transnational Radical Party) said that in Tunisia the judiciary was totally dependent on the political power, but, paradoxically, the system was at the same time very formalistic in order to give the impression that Tunisian justice was independent and fair. The main feature of the system of administration of justice in Tunisia was that all judiciary procedures had a political character and the rights of the defence were systematically violated, as evidenced by the actions brought against Moncef Marzouki, the former President of the Tunisian Human Rights Association, Mohamed Moadda and Khenais Chemmeri, President and Vice-President of the Social Democratic Movement, or the lawyer Radhia Nasraoui. The most typical case was that of Khemais Ksilla, Vice-President of the Tunisian League for Human Rights, who had been sentenced to three years in prison simply for explaining in public that he had gone on hunger strike in 1997 in protest against the withdrawal of his passport on the ground of his human rights activities.

45. Another noteworthy element was article 307 bis of the new Code of Criminal Procedure, in force since 1993, which allowed all Tunisians to be

investigated for political activities in foreign countries which were considered lawful in those countries but criminal in Tunisia. Moreover, the lack of independence of the judiciary meant that State agents accused of committing acts of torture in the exercise of their duties enjoyed complete immunity, as did the government-controlled press, which failed to react when citizens were attacked in press campaigns. The Transnational Radical Party therefore invited the Sub-Commission to take all necessary steps to promote the rule of law in Tunisia.

46. The administration of justice also left a great deal to be desired in the Federal Republic of Yugoslavia, where arbitrary arrests were frequent and torture was commonly practised, especially in the case of Albanian detainees. In that connection he referred to the case of Mr. Rexhep Bislimi, an activist of the Council for the Defence of Human Rights and Freedoms, who had been arbitrarily arrested on 6 July and had died on 22 July as a result of ill-treatment in custody. Detentions, disappearances and ill-treatment of medical and humanitarian personnel in Kosovo had int nsified since January 1998. Thus, Mr. Hafir Shala, a member of the Mother Teresa Association, had disappeared since his arrest several months earlier, and Mr. Destan Rukiqi, who had been courageous enough to report human rights abuses in Kosovo and especially in the region of Drenica, was currently in a serious condition in hospital after being subjected to ill-treatment. Despite promises given by Mr. Milosevic to representatives of the European Union and other international bodies, a recurrence of the same scenario as in Bosnia, where international human rights observers had been denied access to combat areas for the purpose of conducting investigations, was to be feared in Kosovo. The Transnational Radical Party therefore urged the Sub-Commission to encourage the Commission's Special Rapporteur on the Former Yugoslavia to consider the matter within the framework of his activities.

47. Mr. LITTMAN (Christian Solidarity International) called upon the Sub-Commission to speak out without delay against the genocide being committed by the Sudanese Government upon a part of the Sudanese population. Only the previous day, the Sudanese Government had blocked the delivery of humanitarian aid by air to the regions affected by famine. If nothing was done, little short of a million people were in danger of starving to death within the coming weeks. The Sub-Commission's intervention could perhaps take the form of a statement by the Chairman similar to the one issued on Kosovo.

48. Ms. MOYA (American Association of Jurists) (AAJ) expressed regret that, unlike the Inter-American Convention on Forced Disappearance of Persons and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the working group's draft convention on forced disappearances did not provide for the possibility that the perpetrator of forced disappearances might be tried in absentia in the State of which the victims were nationals. The lack of any such provision meant, for example, that proceedings such as those being brought at present in Spain or Italy against members of the Argentine and Chilean armed forces would not be possible. Her Association believed that it would be useful if a provision to that effect, modelled on article IV (c) of the Inter-American Convention and article 5, paragraph 1 (c), of the Convention Against Torture, were included in the draft.

49. In its resolution 1997/20, the Sub-Commission had recommended to the Commission to consider the possibility of appointing a special rapporteur on the impunity of perpetrators of violations of economic, social and cultural rights. The Committee on Economic, Social and Cultural Rights had also proposed the appointment of a special rapporteur on violations of those rights. The Commission on Human Rights having taken no action on that request, the AAJ proposed that the Sub-Commission should reiterate it. Such an initiative was especially called for as transnational corporations were seriously infringing fundamental human rights in the economic and financial areas.

50. Ms. SARAMAD (International Association of Democratic Lawyers) (IADL) said that the human rights situation in Iran was steadily deteriorating. More than 250 people had been executed in public during the past year. Four men had been hanged on 17 June 1998 for having "insulted His Eminence the Imam and the Supreme Guide of the Revolution". According to the annual report of Amnesty International, cruel and inhuman punishments such as whipping and stoning continued to be imposed and tortures continued to be practised. Mohammad Hossein Ziai Far, a judicial authority, had recognized that torture was used to extract confessions, that secret detention centres existed and that many people were without news of members of their families abducted by State agents.

51. Women continued to suffer discrimination in the sphere of employment. There was a de facto ban on their exercising certain professions. New steps towards the legalization of sex discrimination were in preparation. The Parliament of the Mollahs had recently adopted a law forbidding the media to publish articles or documents which were likely to create a conflict between the sexes on the pretext of defending women's rights and in contradiction with religious values. Some women had been arrested and manhandled for being inadequately veiled.

52. The press continued to be gagged and no opposition meetings had been authorized since Mr. Khatami had become President. Mr. Khatami, incidentally, had declared that only those who followed Islam and the Supreme Guide could engage in political activities.

53. In conclusion, she said that IADL appealed to the international community to call upon the Iranian Government to respect universal human rights principles.

54. Mr. ARTUCIO (International Commission of Jurists) (ICJ) said that in Peru the executive had adopted a series of measures which seriously infringed the Basic Principles on the Independence of the Judiciary adopted by the General Assembly in 1985. For example, in May 1997 three constitutional court judges had been removed from office for saying that the law authorizing President Fujimori to run for a third term was contrary to the Constitution. In May 1998 the executive had approved a decree having force of law which empowered military courts to try a number of offences which normally fell under the jurisdiction of ordinary courts. For example, cases of murder, kidnapping and theft committed by organized groups of criminals would be classified as "aggravated terrorism" if the perpetrators used military weapons or wore soldiers' or policemen's uniforms, and would for that reason be

brought before military courts. The reasons why it was undesirable that military tribunals should have power to try civilians or military personnel who had committed offences under ordinary law were known to everyone and were stated, in particular, in a report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1991/20, para. 408) and in the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (E/CN.4/Sub.2/1996/18). ICJ therefore requested the Sub-Commission to call upon the Peruvian Government to rescind the Decree-Law of May 1998.

55. With respect to Tunisia, ICJ requested the Sub-Commission to call upon the Tunisian authorities to release Mr. Khemaïs Ksilla, Vice-Chairman of the Tunisian League for the Defence of Human Rights, and to take steps to guarantee the independence of the judicial system and the safety of human rights activists.

56. Mr. OZDEN (Europe-Third World Centre) (CETIM) said that in November 1997 the Istanbul Bar had published a report from which it emerged that detention conditions in Turkish prisons were deplorable. Despite official action by the authorities to combat the practice of torture, nothing had in fact changed. For example, while the duration of police custody had been reduced, arrests were being made by police officers who either did not record the arrested person's name and the date of the arrest or recorded a later date. Furthermore, the right to have access to a lawyer while in police custody, although provided for in the Code of Criminal Procedure, was widely ignored. Torturers were rarely prosecuted, and, when they were, the sentences imposed were absurd. For example, the chief of police Cemalettin Turan had been sentenced only to a fine for having tortured Ms. Yelda Özcan, a member of the Turkish Human Rights Association. The state of siege in force in several Kurdish provinces since 1978 and the state of emergency proclaimed in 1987 were a source of gross and massive violations of human rights.

57. In a recent decision (Incal v. Turkey case), the European Court of Human Rights had declared that the State security courts (DGM) lacked independence and impartiality. They were, in fact, emergency tribunals, which sentenced hundreds of thousands of persons a year for offences of opinion and expression.

58. Lastly, CETIM was profoundly concerned by the infiltration of the State apparatus by the mafia, a problem whose existence was recognized by the Government itself.

59. Mr. GARCIA PICOLA (Pax Romana) said that in Peru the Government, acting in violation of the principle of separation of powers, had adopted a number of decrees having force of law under the pretext of combating a dramatic rise in urban crime. Under those decrees, many offences previously dealt with by ordinary courts were now being tried by military courts on the ground that they constituted acts of "aggravated terrorism". The national police were completely free to decide whether an offence should be classified as a case of aggravated terrorism and could then arrest a person without a judge's warrant even if he were not caught in flagrante delicto. The police could also detain people for 15 days without bringing them before the military judge and could keep them in solitary confinement for 10 days.

60. The freedom of action of examining magistrates had been considerably reduced. The policemen conducting the preliminary inquiry could not be called as witnesses and their report had probative value. Thus, the earlier situation of "faceless justice" had been succeeded by one of "faceless investigation".

61. Restrictions had been placed on the rights of the defence. Judges could not be challenged, and officially appointed lawyers were sometimes appointed by the police themselves. Lastly, more and more severe sentences were being imposed. The country had thus become a real police State.

62. Pax Romana supported the draft convention on forced disappearances. In that connection, it should be noted that in Mexico several persons, including Salvador Mejía Calderón, Pedro Romero Macedo and Vicente Delgado Mota, had been arrested during the past month, a fact which shed significant light upon the situation in a country where massacres had been perpetrated, as for instance at Acteal.

63. In conclusion, Pax Romana called upon the Sub-Commission to condemn the growing number of human rights violations committed in Peru and Mexico.

64. Mr. MOKBIL (War Resisters International) said that the situation in Yemen was a typical example of the link between the application of emergency provisions and human rights violations, which had become more and more common in that country. All the abuses referred to in the report on the question, in particular corruption of the judiciary and its subordination to the executive, suppression of the freedom of opinion and expression, terrorism, kidnapping, murder, arbitrary arrests, torture and other forms of discriminatory, inhuman and degrading treatment were regularly practised in Yemen. As an example, he referred to events which had occurred during the previous three months, in particular the violent suppression of peaceful demonstrations in several regions in the course of which many persons had been killed, wounded or arrested, air bombardment of civilian homes, and the murder in July 1998 of three nuns belonging to the Mother Teresa Association, who had come to Yemen in order to offer humanitarian assistance.

65. War Resistance International therefore appealed to the Sub-Commission to adopt a resolution urging the Yemeni Government to put an end to human rights violations and the practice of torture in Yemen and to release detainees.

66. Ms. MENEGAKIS (International Educational Development) expressed concern at police harassment and violence against members of the royal family of Hawaii accused of alleged offences arising from their attempts to restore the Kingdom of Hawaii. In particular, she referred to the arbitrary arrest of Queen Akahi Wahine for alleged assault, although it was the Queen herself who had been the victim of an abduction attempt.

67. Her organization further requested the Sub-Commission to join 160 members of the United States Congress in demanding the release of Leyla Zana, a Kurdish deputy, and other Kurdish members of Turkey's National Assembly imprisoned for their political beliefs and to urge the Turkish Government to release the writer Ismail Beskci, jailed for many years for his writings.

68. In Indonesia, many persons had been arrested and imprisoned following the general movement of unrest after long years of oppression in that country. The Sub-Commission should, in particular, demand that the Indonesian authorities should pay due compensation to six persons jailed in the Moluccas in February 1998 for claiming the right of Moluccans to self-determination, as well as to Indonesians of Chinese origin subjected to numerous violations during the crisis of May 1998.

69. Her organization was also deeply concerned by the continued imprisonment of prisoners of war of both parties to the conflict in Western Sahara. It particularly drew the Sub-Commission's attention to the situation of Mohammad Dadach, detained since 1976. It would be recalled that the ceasefire agreement of 6 September 1991 provided for the immediate release of all political prisoners and prisoners of war.

70. Lastly, it appealed to the Sub-Commission to intercede as a matter of urgency with the United States Government for the release of Leonard Peltier, one of the greatest Indian leaders of the age, who had been in prison for 22 years and whose health had suffered serious deterioration owing to the prison authorities' refusal to allow him the necessary medical treatment. Lastly, she urged the Sub-Commission to call on all relevant authorities to obtain the earliest possible release of Vincent Cochetel, a UNHCR representative held hostage in North Ossetia for the past 200 days.

71. Mr. PANDITA (Interfaith International), speaking on agenda item 9 (c), said that he shared the view expressed by Mr. Chernichenko in his report (E/CN.4/Sub.2/1997/29) that crimes such as slavery, genocide or ethnic cleansing should be classified as international crimes and, by extension, as "crimes against the peace and security of mankind". Mr. Chernichenko rightly pointed out that serious human rights violations, including international crimes, were often perpetrated by non-government entities, terrorist groups, etc., but regrettably did not undertake an in-depth analysis of the problem and, in particular, did not discuss the system of operation of such groups. Yet it was clear that they often acted with the support and the material and logistical assistance of certain States, notwithstanding those States' protestations of non-involvement. In some cases, organizations which invoked religion to justify their actions were merely a tool in the hands of certain Governments.

72. That situation, highly dangerous as it was to peace and security in any given region, prevailed in many parts of the world, and in particular in Central and South Asia, where human rights violations were the direct result of genocide and ethno-religious cleansing of targeted groups and communities. Thus, hundreds of thousands of inhabitants of Tajikistan had been forced to go into exile following terrorist acts committed by groups based in the north of the neighbouring country of Afghanistan. Likewise, in the Indian State of Jammu and Kashmir, the 300,000 persons composing the small religious minority of the Pandits of Kashmir had been driven from the region by externally sponsored terrorist groups of fundamentalists which wanted to eliminate them.

73. The time had come for the perpetrators of those crimes together with their patrons to account for their acts before the international community. A mechanism to strengthen the mandate of relevant agencies such as the International Law Commission needed to be evolved to that end.

74. Mr. CHOEPHEL (Society for Threatened Peoples) said that certain States made a show of becoming parties to certain international human rights instruments, but did nothing to ensure the implementation of their own national laws to safeguard the human rights of detainees. Thus, since the ratification by China of the United Nations Convention against Torture, 55 Tibetan political prisoners had died as a result of torture. More than 1,200 political prisoners remained incarcerated in Tibet for the non-violent expression of their political views and were denied all their rights, including the right to legal assistance, family visits and medical care. During the past two years more than 450 Tibetans had been detained and sentenced to long terms of imprisonment for "endangering State security" or "leaking State secrets", and many of them were being routinely tortured in prison.

75. As an example, he referred to the case of Ngawang Sangdrol, a young nun first arrested at the age of 10 and several times thereafter, who had been sentenced to a total of 18 years in prison. She was at present beirg held in solitary confinement at Drapchi Prison as a punishment for her involvement in a prison protest in May 1998 and was believed to have been tortured. Tanak Jigme Sangpo, a teacher arrested in 1964 on a charge of "counter-revolutionary propaganda", was currently serving a sentence of 28 years, his sentence having been increased by 8 years for protesting against the situation in Tibet and against his prison conditions on the occasion of a Swiss delegation's visit to Drapchi Prison in December 1991. The best known case, of course, was that of Gedhun Choekyi Nyima, the nine-year-old boy regarded as the second-highest spiritual leader of the Tibetan people, who had been held incommunicado for three years by the Chinese authorities.

76. It was regrettable that China, after taking a first step in the right direction by inviting foreign delegations, including the Working Group on Arbitrary Detention, to visit Tibet, had failed to modify its practices. In particular, his organization appealed through the Sub-Commission to the Working Group on Arbitrary Detention to intervene without delay in order to safeguard the well-being of three Tibetan prisoners who had suffered reprisals in the form of ill-treatment, solitary confinement and extension of their sentences for protesting about their conditions of detention to the Working Group.

77. In another incident, 11 identified Tibetan prisoners had been shot or tortured to death at Drapchi Prison following two protests at the prison in May 1998. The incident demonstrated that the Chinese authorities relied exclusively on violent methods to deal with prisoners and had no regard for international instruments designed to protect their human rights. In the eyes of the Chinese authorities, political prisoners were criminals deserving only of death. His organization appealed to the Sub-Commission to express its concern at the death of 11 young Tibetan prisoners whose only crime had been to protest against inhuman detention conditions.

78. Mr. REHMAN (International Institute of Peace), speaking on agenda item 9 (a), said that states of emergency were almost always declared because of the insecurity of the rulers of the country concerned. Thus, an emergency had been declared in Pakistan directly after that country had conducted nuclear tests in May 1998. The object of the emergency had clearly been to

stifle protest. Pakistan's rulers knew that the people, well aware of their country's precarious economic situation, would not accept the idea that extremely scarce resources which ought to have been used for economic and social development should be diverted to the making of the most destructive weapon of war.

79. Furthermore, states of emergency inevitably resulted in gross violations of human rights, since all rights and freedoms, especially the freedoms of expression and association, were suspended. If those were the characteristics of a state of emergency, the people of a part of Jammu and Kashmir militarily occupied by Pakistan could be said to have lived under a state of emergency for 50 years. The region had no media of its own, political activity was prohibited and freedom of expression was non-existent. In most countries, an emergency was declared for a short period of time and freedoms were restored once the emergency had been lifted. People in Jammu and Kashmir were born and died under a state of emergency.

80. Mr. BHAN (Himalayan Research and Cultural Foundation), speaking on agenda item 9 (c), said that from the point of view of international law, gross and massive violations of human rights in any form had to be regarded as crimes against humanity that were not subject to statutory limitation, and that their perpetrators had to be prosecuted and punished by the authorities of the State in whose territory their crimes had been committed and in which they had been apprehended.

81. Terrorism was a new form of crime against humanity which caused grave concern to the General Assembly and the Commission on Human Rights. A number of mechanisms and bodies had been set up to study all aspects of the phenomenon and the means of combating it and to suggest measures to be taken to punish the perpetrators. It had to be recognized, however, that acts of terrorism continued to be perpetrated in various parts of the world, and in particular in Jammu and Kashmir, where terrorist groups sponsored by Pakistan were continuing to kill innocent people and to engage in massive human rights violations. The main targets of those groups were Kashmiri Pandits and Hindus. Pakistan, pursuing its objective of subverting the democratic process in Jammu and Kashmir, resorted to the use of terrorist groups in order to promote its territorial ambitions. It therefore deserved to be declared a terrorist State.

82. The Sub-Commission should without delay condemn all countries which, ignoring the appeals of the international community, sponsored and encouraged terrorism and call for the perpetrators of terrorist acts committed in Jammu and Kashmir to be tried and sentenced by an appropriate international tribunal, and should publicly censure the countries which sheltered terrorists in their territory and provided them with political and material support.

The meeting rose at 1.05 p.m.